

SECOND REGULAR SESSION

# HOUSE BILL NO. 2195

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SECREST.

Read 1<sup>st</sup> time March 14, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

3567L.011

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### AN ACT

To repeal sections 288.040 and 288.050, RSMo, and to enact in lieu thereof two new sections relating to employment security.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 288.040 and 288.050, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 288.040 and 288.050, to read as follows:

288.040. 1. A claimant who is unemployed and has been determined to be an insured  
2 worker shall be eligible for benefits for any week only if the deputy finds that:

3 (1) The claimant has registered for work at and thereafter has continued to report at an  
4 employment office in accordance with such regulations as the division may prescribe;

5 (2) The claimant is able to work and is available for work. No person shall be deemed  
6 available for work unless such person has been and is actively and earnestly seeking work. Upon  
7 the filing of an initial or renewed claim, and prior to the filing of each weekly claim thereafter,  
8 the deputy shall notify each claimant of the number of work search contacts required to constitute  
9 an active search for work. No person shall be considered not available for work, pursuant to this  
10 subdivision, solely because he or she is a substitute teacher or is on jury duty. A claimant shall  
11 not be determined to be ineligible pursuant to this subdivision because of not actively and  
12 earnestly seeking work if:

13 (a) The claimant is participating in training approved pursuant to Section 236 of the  
14 Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended); or

15 (b) The claimant is temporarily unemployed through no fault of his or her own and has  
16 a definite recall date within eight weeks of his or her first day of unemployment; however, upon  
17 application of the employer responsible for the claimant's unemployment, such eight-week period  
18 may be extended at the discretion of the director; **or**

19           **(c) The claimant is participating in a state-approved drug treatment program;**

20           (3) The claimant has reported in person to an office of the division as directed by the  
21 deputy, but at least once every four weeks, except that a claimant shall be exempted from the  
22 reporting requirement of this subdivision if:

23           (a) The claimant is claiming benefits in accordance with division regulations dealing  
24 with partial or temporary total unemployment; or

25           (b) The claimant is temporarily unemployed through no fault of his or her own and has  
26 a definite recall date within eight weeks of his or her first day of unemployment; or

27           (c) The claimant resides in a county with an unemployment rate, as published by the  
28 division, of ten percent or more and in which the county seat is more than forty miles from the  
29 nearest division office;

30           (d) The director of the division of employment security has determined that the claimant  
31 belongs to a group or class of workers whose opportunities for reemployment will not be  
32 enhanced by reporting in person, or is prevented from reporting due to emergency conditions that  
33 limit access by the general public to an office that serves the area where the claimant resides, but  
34 only during the time such circumstances exist.

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36 Ineligibility pursuant to this subdivision shall begin on the first day of the week which the  
37 claimant was scheduled to claim and shall end on the last day of the week preceding the week  
38 during which the claimant does report in person to the division's office;

39           (4) Prior to the first week of a period of total or partial unemployment for which the  
40 claimant claims benefits he has been totally or partially unemployed for a waiting period of one  
41 week. No more than one waiting week will be required in any benefit year. The one-week  
42 waiting period shall become compensable after unemployment during which benefits are payable  
43 for nine consecutive weeks. No week shall be counted as a week of total or partial  
44 unemployment for the purposes of this subsection unless it occurs within the benefit year which  
45 includes the week with respect to which the claimant claims benefits;

46           (5) The claimant has made a claim for benefits;

47           (6) The claimant is participating in reemployment services, such as job search assistance  
48 services, as directed by the deputy if the claimant has been determined to be likely to exhaust  
49 regular benefits and to need reemployment services pursuant to a profiling system established  
50 by the division, unless the deputy determines that:

51           (a) The individual has completed such reemployment services; or

52           (b) There is justifiable cause for the claimant's failure to participate in such  
53 reemployment services.

54           2. A claimant shall be ineligible for waiting week credit or benefits for any week for

55 which the deputy finds he or she is or has been suspended by his or her most recent employer for  
56 misconduct connected with his or her work. **For the purposes of this chapter:**

57 **(1) Suspensions of four weeks or more shall be treated as a discharge; and**

58 **(2) A professionally administered and documented positive chemical test result for**  
59 **a controlled substance, as defined pursuant to section 195.010, RSMo, shall be deemed**  
60 **misconduct connected with work, except as provided for in paragraph (c) of subdivision**  
61 **(2) of subsection 1 of this section. Ineligibility pursuant to a positive chemical test shall**  
62 **apply only in claims against the employer who employed the claimant at the time of the**  
63 **positive test result. The employer suspending an employee pursuant to this provision must**  
64 **have notified the employee of the employer's drug-free workplace policy by conspicuously**  
65 **posting the policy in the workplace, by including the policy in an employee handbook, or**  
66 **by statement of such policy in a collective bargaining agreement governing employment of**  
67 **the employee. The policy shall state that a positive test shall be deemed misconduct and**  
68 **may result in suspension or termination of employment.**

69 3. (1) Benefits based on "service in employment", defined in subsections 7 and 8 of  
70 section 288.034, shall be payable in the same amount, on the same terms and subject to the same  
71 conditions as compensation payable on the basis of other service subject to this law; except that:

72 (a) With respect to service performed in an instructional, research, or principal  
73 administrative capacity for an educational institution, benefits shall not be paid based on such  
74 services for any week of unemployment commencing during the period between two successive  
75 academic years or terms, or during a similar period between two regular but not successive terms,  
76 or during a period of paid sabbatical leave provided for in the individual's contract, to any  
77 individual if such individual performs such services in the first of such academic years (or terms)  
78 and if there is a contract or a reasonable assurance that such individual will perform services in  
79 any such capacity for any educational institution in the second of such academic years or terms;

80 (b) With respect to services performed in any capacity (other than instructional, research,  
81 or principal administrative capacity) for an educational institution, benefits shall not be paid on  
82 the basis of such services to any individual for any week which commences during a period  
83 between two successive academic years or terms if such individual performs such services in the  
84 first of such academic years or terms and there is a contract or a reasonable assurance that such  
85 individual will perform such services in the second of such academic years or terms;

86 (c) With respect to services described in paragraphs (a) and (b) of this subdivision,  
87 benefits shall not be paid on the basis of such services to any individual for any week which  
88 commences during an established and customary vacation period or holiday recess if such  
89 individual performed such services in the period immediately before such vacation period or  
90 holiday recess, and there is reasonable assurance that such individual will perform such services

91 immediately following such vacation period or holiday recess;

92 (d) With respect to services described in paragraphs (a) and (b) of this subdivision,  
93 benefits payable on the basis of services in any such capacity shall be denied as specified in  
94 paragraphs (a), (b), and (c) of this subdivision, to any individual who performed such services  
95 at an educational institution while in the employ of an educational service agency, and for this  
96 purpose the term "educational service agency" means a governmental agency or governmental  
97 entity which is established and operated exclusively for the purpose of providing such services  
98 to one or more educational institutions.

99 (2) If compensation is denied for any week pursuant to paragraph (b) or (d) of  
100 subdivision (1) of this subsection, to any individual performing services at an educational  
101 institution in any capacity (other than instructional, research or principal administrative capacity),  
102 and such individual was not offered an opportunity to perform such services for the second of  
103 such academic years or terms, such individual shall be entitled to a retroactive payment of the  
104 compensation for each week for which the individual filed a timely claim for compensation and  
105 for which compensation was denied solely by reason of paragraph (b) or (d) of subdivision (1)  
106 of this subsection.

107 4. (1) A claimant shall be ineligible for waiting week credit, benefits or shared work  
108 benefits for any week for which he or she is receiving or has received remuneration exceeding  
109 his or her weekly benefit amount or shared work benefit amount in the form of:

110 (a) Compensation for temporary partial disability pursuant to the workers' compensation  
111 law of any state or pursuant to a similar law of the United States;

112 (b) A governmental or other pension, retirement or retired pay, annuity, or other similar  
113 periodic payment which is based on the previous work of such claimant to the extent that such  
114 payment is provided from funds provided by a base period or chargeable employer pursuant to  
115 a plan maintained or contributed to by such employer; but, except for such payments made  
116 pursuant to the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding  
117 provisions of prior law), the provisions of this paragraph shall not apply if the services performed  
118 for such employer by the claimant after the beginning of the base period (or remuneration for  
119 such services) do not affect eligibility for or increase the amount of such pension, retirement or  
120 retired pay, annuity or similar payment.

121 (2) If the remuneration referred to in this subsection is less than the benefits which would  
122 otherwise be due, the claimant shall be entitled to receive for such week, if otherwise eligible,  
123 benefits reduced by the amount of such remuneration, and, if such benefit is not a multiple of one  
124 dollar, such amount shall be lowered to the next multiple of one dollar.

125 (3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, if a  
126 claimant has contributed in any way to the Social Security Act or the Railroad Retirement Act

127 of 1974, or the corresponding provisions of prior law, no part of the payments received pursuant  
128 to such federal law shall be deductible from the amount of benefits received pursuant to this  
129 chapter.

130 5. A claimant shall be ineligible for waiting week credit or benefits for any week for  
131 which or a part of which he or she has received or is seeking unemployment benefits pursuant  
132 to an unemployment insurance law of another state or the United States; provided, that if it be  
133 finally determined that the claimant is not entitled to such unemployment benefits, such  
134 ineligibility shall not apply.

135 6. (1) A claimant shall be ineligible for waiting week credit or benefits for any week for  
136 which the deputy finds that such claimant's total or partial unemployment is due to a stoppage  
137 of work which exists because of a labor dispute in the factory, establishment or other premises  
138 in which such claimant is or was last employed. In the event the claimant secures other  
139 employment from which he or she is separated during the existence of the labor dispute, the  
140 claimant must have obtained bona fide employment as a permanent employee for at least the  
141 major part of each of two weeks in such subsequent employment to terminate his or her  
142 ineligibility. If, in any case, separate branches of work which are commonly conducted as  
143 separate businesses at separate premises are conducted in separate departments of the same  
144 premises, each such department shall for the purposes of this subsection be deemed to be a  
145 separate factory, establishment or other premises. This subsection shall not apply if it is shown  
146 to the satisfaction of the deputy that:

147 (a) The claimant is not participating in or financing or directly interested in the labor  
148 dispute which caused the stoppage of work; and

149 (b) The claimant does not belong to a grade or class of workers of which, immediately  
150 preceding the commencement of the stoppage, there were members employed at the premises  
151 at which the stoppage occurs, any of whom are participating in or financing or directly interested  
152 in the dispute.

153 (2) "Stoppage of work" as used in this subsection means a substantial diminution of the  
154 activities, production or services at the establishment, plant, factory or premises of the employing  
155 unit. This definition shall not apply to a strike where the employees in the bargaining unit who  
156 initiated the strike are participating in the strike. Such employees shall not be eligible for waiting  
157 week credit or benefits during the period when the strike is in effect, regardless of diminution,  
158 unless the employer has been found guilty of an unfair labor practice by the National Labor  
159 Relations Board or a federal court of law for an act or actions preceding or during the strike.

160 7. On or after January 1, 1978, benefits shall not be paid to any individual on the basis  
161 of any services, substantially all of which consist of participating in sports or athletic events or  
162 training or preparing to so participate, for any week which commences during the period between

163 two successive sport seasons (or similar periods) if such individual performed such services in  
164 the first of such seasons (or similar periods) and there is a reasonable assurance that such  
165 individual will perform such services in the later of such seasons (or similar periods).

166 8. Benefits shall not be payable on the basis of services performed by an alien, unless  
167 such alien is an individual who was lawfully admitted for permanent residence at the time such  
168 services were performed, was lawfully present for purposes of performing such services, or was  
169 permanently residing in the United States under color of law at the time such services were  
170 performed (including an alien who was lawfully present in the United States as a result of the  
171 application of the provisions of Section 212(d)(5) of the Immigration and Nationality Act).

172 (1) Any data or information required of individuals applying for benefits to determine  
173 whether benefits are not payable to them because of their alien status shall be uniformly required  
174 from all applicants for benefits.

175 (2) In the case of an individual whose application for benefits would otherwise be  
176 approved, no determination that benefits to such individual are not payable because of such  
177 individual's alien status shall be made except upon a reponderance of the evidence.

288.050. 1. Notwithstanding the other provisions of this law, a claimant shall be  
2 disqualified for waiting week credit or benefits until after the claimant has earned wages for  
3 work insured pursuant to the unemployment compensation laws of any state equal to ten times  
4 the claimant's weekly benefit amount if the deputy finds:

5 (1) That the claimant has left work voluntarily without good cause attributable to such  
6 work or to the claimant's employer; except that the claimant shall not be disqualified:

7 (a) If the deputy finds the claimant quit such work for the purpose of accepting a more  
8 remunerative job which the claimant did accept and earn some wages therein;

9 (b) If the claimant quit temporary work to return to such claimant's regular employer; or  
10 (c) If the deputy finds the individual quit work, which would have been determined not  
11 suitable in accordance with paragraphs (a) and (b) of subdivision (3) of this subsection, within  
12 twenty-eight calendar days of the first day worked; or

13 (d) As to initial claims filed after December 31, 1988, if the claimant presents evidence  
14 supported by competent medical proof that she was forced to leave her work because of  
15 pregnancy, notified her employer of such necessity as soon as practical under the circumstances,  
16 and returned to that employer and offered her services to that employer as soon as she was  
17 physically able to return to work, as certified by a licensed and practicing physician, but in no  
18 event later than ninety days after the termination of the pregnancy. An employee shall have been  
19 employed for at least one year with the same employer before she may be provided benefits  
20 pursuant to the provisions of this paragraph;

21 (2) That the claimant has retired pursuant to the terms of a labor agreement between the

22 claimant's employer and a union duly elected by the employees as their official representative  
23 or in accordance with an established policy of the claimant's employer; or

24 (3) That the claimant failed without good cause either to apply for available suitable  
25 work when so directed by the deputy, or to accept suitable work when offered the claimant, either  
26 through the division or directly by an employer by whom the individual was formerly employed,  
27 or to return to the individual's customary self-employment, if any, when so directed by the  
28 deputy.

29 (a) In determining whether or not any work is suitable for an individual, the division  
30 shall consider, among other factors and in addition to those enumerated in paragraph (b) of this  
31 subdivision, the degree of risk involved to the individual's health, safety and morals, the  
32 individual's physical fitness and prior training, the individual's experience and prior earnings, the  
33 individual's length of unemployment, the individual's prospects for securing work in the  
34 individual's customary occupation, the distance of available work from the individual's residence  
35 and the individual's prospect of obtaining local work; except that, if an individual has moved  
36 from the locality in which the individual actually resided when such individual was last  
37 employed to a place where there is less probability of the individual's employment at such  
38 individual's usual type of work and which is more distant from or otherwise less accessible to  
39 the community in which the individual was last employed, work offered by the individual's most  
40 recent employer if similar to that which such individual performed in such individual's last  
41 employment and at wages, hours, and working conditions which are substantially similar to those  
42 prevailing for similar work in such community, or any work which the individual is capable of  
43 performing at the wages prevailing for such work in the locality to which the individual has  
44 moved, if not hazardous to such individual's health, safety or morals, shall be deemed suitable  
45 for the individual;

46 (b) Notwithstanding any other provisions of this law, no work shall be deemed suitable  
47 and benefits shall not be denied pursuant to this law to any otherwise eligible individual for  
48 refusing to accept new work under any of the following conditions:

49 a. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

50 b. If the wages, hours, or other conditions of the work offered are substantially less  
51 favorable to the individual than those prevailing for similar work in the locality;

52 c. If as a condition of being employed the individual would be required to join a  
53 company union or to resign from or refrain from joining any bona fide labor organization.

54 2. (1) Notwithstanding the other provisions of this law, if a deputy finds that a claimant  
55 has been discharged for misconduct connected with the claimant's work, such claimant,  
56 depending upon the seriousness of the misconduct as determined by the deputy according to the  
57 circumstances in each case, shall be disqualified for waiting week credit or benefits for not less

58 than four nor more than sixteen weeks for which the claimant claims benefits and is otherwise  
59 eligible. In addition to the disqualification for benefits pursuant to this provision the division  
60 may in the more aggravated cases of misconduct, cancel all or any part of the individual's wage  
61 credits, which were established through the individual's employment by the employer who  
62 discharged such individual, according to the seriousness of the misconduct. A disqualification  
63 provided for pursuant to this subsection shall not apply to any week which occurs after the  
64 claimant has earned wages for work insured pursuant to the unemployment compensation laws  
65 of any state in an amount equal to eight times the claimant's weekly benefit amount.

66 **(2) For the purposes of this chapter, a professionally administered and documented**  
67 **positive chemical test result for a controlled substance, as defined pursuant to section**  
68 **195.010, RSMo, shall be deemed misconduct connected with work. Disqualification for**  
69 **benefits pursuant to a positive chemical test shall apply only in claims against the employer**  
70 **who employed the claimant at the time of the positive test result. The employer**  
71 **discharging an employee pursuant to this provision must have notified the employee of the**  
72 **employer's drug-free workplace policy by conspicuously posting the policy in the**  
73 **workplace, by including the policy in an employee handbook, or by statement of such**  
74 **policy in a collective bargaining agreement governing employment of the employee. The**  
75 **policy shall state that a positive test shall be deemed misconduct and may result in**  
76 **suspension or termination of employment.**

77 3. A pattern of absenteeism or tardiness may constitute misconduct regardless of whether  
78 the last incident alone which results in the discharge constitutes misconduct.

79 4. Notwithstanding the provisions of subsection 1 of this section, a claimant may not be  
80 determined to be disqualified for benefits because the claimant is in training approved pursuant  
81 to section 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended), or  
82 because the claimant left work which was not "suitable employment" to enter such training. For  
83 the purposes of this subsection "suitable employment" means, with respect to a worker, work of  
84 a substantially equal or higher skill level than the worker's past adversely affected employment,  
85 and wages for such work at not less than eighty percent of the worker's average weekly wage as  
86 determined for the purposes of the Trade Act of 1974.